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PROJECT NO. 51812

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ISSUES RELATED TO THE STATE §
OF DISASTER FOR THE FEBRUARY §
2021 WINTER WEATHER EVENT §

2021 APR -1 PM 3:22
BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

**COALITION OF COMPETITIVE RETAIL
ELECTRIC PROVIDERS
THIRD REQUEST FOR EMERGENCY
ACTION**

The Coalition of Competitive Retail Electric Providers¹ (CCR) again urges the Public Utility Commission of Texas (“PUC” or “Commission”) to rescind its disconnection for non-payment (“DNP”) moratorium.

BACKGROUND

On February 12, 2021 the Governor of Texas issued a “Disaster Declaration in Response to Severe Winter Weather in Texas.”² Citing Section 418.017 of the Texas Government Code, this disaster declaration authorized the “use of all available resources of the state government and of political subdivisions that are reasonably necessary to cope with this disaster.” Further, citing section 418.016 of the Texas Government Code, the Governor directed that “any regulatory statute prescribing procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. The order also authorized the suspension of statutes and rules regarding contracting or procurement that “would impede any state agency’s emergency response that is necessary to protect life or property threatened by this declared disaster.”

On Sunday, February 21, 2021, at 3:30 p.m. the Public Utility Commission of Texas (“PUC” or “Commission”) convened an emergency Open Meeting and issued an order directing

¹ The Coalition of Competitive Retailers supporting this filing including those in Attachment One.

² Docket 51812, Item 2.

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action and granting exceptions to certain rules.³ The Commission cited the Governor’s disaster declaration as part of the basis for issuing its order as well as the authority found in 16 TAC §22.5(a), to find that there existed a public emergency and imperative public necessity that constituted good cause for granting exceptions to specific Commission rules. One of the rules the Commission granted an exception to was 16 TAC §25.483(c) which relates to disconnection of a customer for nonpayment.

Under §551.045 of the Texas Government Code, an emergency meeting can be held with as little as two hours after notice has been publicly posted, but only if “immediate action is required of a governmental body because of: (1) an imminent threat to public health and safety; or (2) a reasonably unforeseeable situation.”

Commission procedural rule §22.5 grants the Commission the right to suspend the operation of one or more of the sections of this chapter “if there exists a public emergency or imperative public necessity and the Commission ascertains that suspension will best serve the public interest and will not prejudice the rights of any party.”

On February 21, 2021, the winter weather that had triggered the Governor’s Disaster Declaration had ended. Normal temperatures had returned throughout the State of Texas, and the electricity grid had stabilized. Rolling blackouts had ceased occurring by approximately midnight on February 18, 2021. Comments made by Chm. Walker during the Emergency Open Meeting stated that the disconnect moratorium would last “until we get the financial part of this worked out which I’m hoping will be soon.” The Chair then made clear that the disconnect moratorium would only apply in areas open to choice (competition), not to electric cooperatives or municipally owned utilities.

Through its emergency order, the Commission articulated that the disconnect moratorium

³ Docket 51812, Item 6.

was tied to the high prices (\$9,000 per MWh) experienced by market participants during the week of February 14-20, 2021 and was seeking to protect the end use customers (1) from receiving bills reflecting these high wholesale prices and (2) from being disconnected if they did not pay bills containing these high wholesale prices. In fact, there were numerous media stories discussing how customers were receiving bills in the thousands of dollars for power consumed over a few days during the week of February 14-20, 2021.⁴ Almost every one of these media accounts explained that customers receiving these high bills were on prepay plans whose electricity price was directly indexed to the wholesale price of power. However, nowhere in their order, did the Commission explicitly state that it was only customers on such plans that would be protected by a disconnect moratorium. Rather, the Commission prevented all REPs from submitting disconnect requests irrespective of the type of plan serving the end use customer, and prohibited the Transmission and Distribution Utilities from executing any disconnect requests it did receive.

While the DNP moratorium has a negative impact on all REPs, those REPs offering prepaid service face an added conundrum. Specifically, since deposits cannot be required for prepay customers, REPs providing prepay service have no mechanism to ensure payment during a disconnect moratorium as customers can simply switch away instead of paying the credit balance incurred. As a result, many prepay providers have simply stopped marketing to and acquiring new customers during this moratorium further affecting their ability to financially recover from this winter storm.

⁴ BBC article: <https://www.bbc.com/news/world-us-canada-56147311> and Reuters: <https://www.reuters.com/article/us-usa-weather-texas/texas-utilities-cant-stick-customers-with-huge-bills-after-storm-abbott-idUSKBN2AL0J7>

DISCONNECT MORATORIUM REMAINS IN EFFECT

According to a press article posted on February 21, 2021 at 12:39 p.m.⁵:

“Abbott called an emergency meeting with state lawmakers on Saturday after reports of many customers receiving bills for thousands of dollars for just a few days’ electricity service while Texas was gripped by frigid temperatures.

Texans who have suffered through days of freezing cold without power should not be subjected to skyrocketing energy bills,” Abbott told reporters on Sunday in San Antonio.

He said the Public Utility Commission of Texas will order electricity companies to pause sending bills to customers, and will issue a temporary moratorium on disconnection for non-payment.

The state will use the time to find a way to protect utility customers, Abbott said.”

As of Friday, March 28, 2021, the Commission has taken no action to lift its “temporary” disconnect moratorium. Rather, in the past month the Commission has seen all of its Commissioners resign, although the remaining Commissioner, Chairman D’Andrea will remain in place until his successor is named. To date, the Governor has not named a successor.

In a filing on March 4, 2021, this Coalition called on the Commission to rescind its Disconnection Moratorium. The Commission, at its March 5, 2021 took no action on this request.

The Disconnect Moratorium remains in place.

ACTION THE COMMISSION SHOULD TAKE

We again urge the Commission to rescind the disconnect moratorium it imposed. The CCR understands that in adopting its order the Commission was protecting consumers who may have been enrolled on prepaid, indexed plans tied directly to the wholesale price of electricity. As we all know, that price spike the week of February 14, 2021 left these customers with

⁵ Reuters: <https://www.reuters.com/article/us-usa-weather-texas/texas-utilities-cant-stick-customers-with-huge-bills-after-storm-abbott-idUSKBN2AL0J7>

enormous balances owed on their accounts. However, it is the CCR's belief that the REP offering this plan is no longer serving customers in Texas.⁶ As a result, the need for this type of emergency, blanket protection has ended.

As REPs return to their normal billing practices (for both prepay and postpay customers), REPs need customers to pay their bills. REPs are already obligated to work with customers who express an inability to pay per the requirement to offer access to deferred payment plans.⁷ The imposition of a broad disconnect moratorium on this market only serves to incent customers to believe they will not have to pay the bills they are accruing for electricity. Further, by imposing a DNP moratorium on REPs while simultaneously allowing ERCOT to resume normal invoicing and settlement timelines under its protocols, only serves to further hamper REPs abilities to meet their ongoing market obligations.

If the Commission finds elimination of the existing DNP moratorium untenable, the CCR offers a couple of alternatives:

- limit the DNP moratorium to bills containing consumption during the week of February 14, 2021; or
- keep the DNP moratorium but allow REPs to automatically place delinquent accounts on a deferred payment plan (DPP) with a switch-hold.

The Commission could consider limiting the DNP moratorium to a prohibition on disconnecting for bills (or accounts) that include consumption for the week of February 14, 2021. This narrower prohibition would honor the intent of protecting customers who may experience “sticker shock” for any consumption during that week, though properly billed at normal, contracted rates, may result in higher than average bills. This would essentially allow REPs to

⁶ Texas Tribune, February 26, 2021: <https://www.texastribune.org/2021/02/26/griddy-texas-ercot-electricity-costs/>

⁷ Commission order of February 21, 2021

treat amounts owed for consumption during the week of February 14, 2021 as disputed amounts pursuant to §§25.480(f) and 25.483(e)(5), which prohibit disconnects for nonpayment of disputed charges.

Alternatively, the Commission could keep the DNP moratorium in place through March 31, 2021, but allow REPs to automatically place delinquent accounts (or prepay accounts that have a negative account balance greater than \$50) on a deferred payment plan (DPP) with a switch-hold for all bills issued (or negative account balances) on or before March 31, 2021. for all bills issued (or negative account balances) on or before March 31, 2021. This solution provides REPs some certainty that the customer bill will be paid while providing the customer additional time to make such payments.

By creating a mechanism that incents customer payment, REPs would not be forced to raise their rates in the future to socialize the cost of higher customer defaults created by this DNP moratorium. Should this option be chosen, the Commission could mandate the DPP terms as those already specified in §25.480(j)(2)(B) for postpay customers or §25.498(i)(6) for prepay customers, or other terms the Commission may find appropriate. The CCR would further agree that all DPPs automatically entered into by operation of this provision be provided to the customer as normally required by §25.480(j)(5) for postpay customers or §25.498(i)(9) for prepay customers.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Coalition of Competitive Retailers respectfully requests that the Commission immediately take action to either lift the disconnect moratorium or provide an alternate means that allows REPs the surety of payment from their customers. The CCR further requests such other and further relief to which it shows itself entitled.

Respectfully Submitted,

By: 

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**ATTORNEY FOR THE COALITION OF
COMPETITIVE RETAILERS**

Attachment One
Coalition of Competitive Retail Electric Providers
Supporting This Filing Background

The Coalition of Competitive Retailers is an ad hoc group of competitive Retail Electric Providers that joined together in its desire to address the market issues stemming from the February 2021 Winter Weather Emergency.

Participants in this filing:

Alliance Power Company
AP Gas and Electric (TX), LLC
Brooklet Energy
Eligo Energy, LLC
3000Energy Corp. d/b/a Penstar Power
Pogo Energy, LLC
Summer Energy, LLC
Windrose Power and Gas, LLC
Young Energy